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THE DEPARTMENT OF DEFENSE MUST USE
HUMANITARIAN ACTIVITIES
AS A FORCE MULTIPLIER AND
AS A MEANS OF PROMOTING STABILITY
IN DEVELOPING COUNTRIES

A Thesis

Presented to

The Judge Advocate General's School, United States Army

The opinions and conclusions expressed herein are those of the author and do not necessarily represent the views of the Judge Advocate General's School, the United States Army or any other governmental agency.

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40TH JUDGE ADVOCATE OFFICER GRADUATE COURSE

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THE DEPARTMENT OF DEFENSE MUST USE
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ABSTRACT: The current instability and chaos in the developing new world order demands a rethinking of U.S. policy on foreign assistance. Military forces will play an integral role in developing and carrying out that policy and must at the same time develop ways to do more with less. The Department of Defense has in place a variety of authorities which it can use to maintain its training base and to implement interim measures calculated to resolve the underlying causes of instability in developing countries. The Department of Defense must make full use of these authorities while pressing for the development of an integrated, comprehensive national strategy to promote stability.

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I. INTRODUCTION

In the 1990s, the Department of Defense (DOD) faces challenges impossible to imagine several years ago. National social and economic problems combined with an evolving new world order have thrust the future role of the military into the forefront of issues confronting the country. Conflicts rage over the size of the defense budget and the need for a defense force in the absence of the Soviet threat.¹ Debates abound over what to do with the so-called peace dividend.² At the same time, the drug war continues,³ Iraq and Libya actively taunt world leaders,⁴ civil strife rages in the former Soviet Union with an emergence of Communist supporters calling for the downfall of Yeltsin,⁵ peaceful coexistence continues to elude the middle east,⁶ and the Caribbean and Latin America persist in the age long tradition of instability and musical governments.⁷ Poverty, hunger and disease continue unabated in underdeveloped countries and become increasingly more problematic in the former Soviet Union.⁸

A. Expanding the Role of the Military Beyond Defense

The importance of the military beyond its traditional defense role in this jumble of world events may not seem apparent at first glance, but the military is and will be vitally involved with each and every one of these issues. Over the past 7 years, Congress has substantially expanded Department of Defense authority and involvement in actions normally categorized as foreign assistance. With that expanded involvement comes the difficult task of picking a path through the minefield of constitutional and statutory limits on DOD's authority to act when called upon to assist in carrying out the foreign policy of the United States by providing disaster relief, humanitarian and civic assistance, and civil affairs activities.

B. A Time to End the "Seat-of-the-Pants Approach"

[I]n a fragmented and challenging new world, American foreign policy needs a conceptual overhaul, the kind of coherent vision that it

got in a simpler past from such men as Dean Acheson and George Kennan. A seat-of-the-pants approach to international relations, even one with its share of short-term successes, will not preserve American leadership.⁹

Knowing the rules under which it must operate in this expanding role is only a part of what DOD must do to adjust to the evolving world situation and to provide its contribution to the development of the country's foreign policy. DOD must develop a cogent and workable strategy to ensure that it can fulfill its warfighting mission in the face of budgetary and personnel cuts while continuing to work towards establishing regional stability in the numerous troublespots which threaten U.S. interests. Without a strategy that takes into account the widest range of disciplines--political, psychological, economic, social, legal, and military--DOD cannot hope to hold its own in this swiftly changing world. This strategy must, of course, be developed in conjunction with others responsible for developing our foreign policy to

ensure not only mutual support for national goals but as a means of forcing the development of goals vital to the United States into a much needed comprehensive plan. It would be incongruous for the United States to declare victory, pack up, and go home to bask in the glow of victory after spending the last 40 years fighting the spread of Communism. Adopting a policy of benign neglect towards the countries it worked so hard to protect and liberate from Communism will leave them prey to social and economic conditions which will inevitably result in upheaval and instability requiring our attention and assistance. It makes more sense politically and economically to put our energy and money into creating conditions which will lead to permanent changes and gradually stabilize these areas. The expanded authority Congress has given to DOD provides a means of working towards that goal.

To the uninitiated, the authority Congress has given to DOD to engage in humanitarian and civic assistance may be clear and unhampered. However, statutory provisions and regulations cannot be read in a vacuum. Many of the authorizations and limitations

are not found in legislation generally considered military in nature and do not present a bright line rule. This paper will set out the parameters of those authorizations and limitations by exploring the constraints of fiscal law and the statutory authority for DOD actions. An analysis of these constraints applied to the expanding authority Congress has given to DOD will show its complexity as well as the importance of knowing and applying the rules to avoid Congressional wrath. With these issues in mind, the need for Congress to allow a less restricted use of this authority for it to have any real impact will become apparent.

II. THE PARAMETERS OF FISCAL AUTHORITY

A. Why Worry About Fiscal Law?

Any analysis of the role of the military must come down to an analysis of fiscal authority. In the truest sense, without fiscal authority, the military cannot legally act. Statutes, regulations and directives may

establish the mission of the military, and the President may be its Commander in Chief, but unless Congress authorizes an activity and appropriates money to fund it, the military is powerless. This basic constraint is rooted in the Constitution and serves as the cornerstone of the fiscal responsibility demanded by the Constitution.

B. Constitutional Authority

The Constitution is the basis for building an understanding of the issues presented here. It is from this document that all authority and responsibility for governing this country flows. All legislative authority vests in the Congress.¹⁰ Only Congress has the power to raise money for the operation of the government and to pay its debts.¹¹ While the President is the Commander in Chief of the Army and Navy,¹² it is Congress which has the power to raise and support the Army and Navy.¹³ In addition, Congress has the power to make all necessary and proper laws to carry out its duties.¹⁴ The Constitution also contains the basis of

the legislative process Congress must use. When Congress passes legislation, it must send the legislation to the President, who can take one of four actions: (1) sign the bill into law, (2) veto the bill, (3) use a "pocket veto" by taking no action for 10 days if Congress has adjourned or, (4) let the bill become law by taking no action for 10 days if Congress is in session.¹⁵ If the President vetoes a bill, the Congress may override the veto with a two thirds vote.¹⁶ It is clear from this brief description that Congress holds a great deal of power.

This power is increased by the Constitutional mandate that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."¹⁷ It is this clause which gives Congress its greatest power--the power of the purse. Without money, the government can not function and, as will become apparent, Congress has created a complex, yet workable method to ensure that control of the public fisc remains in its hands. It is

an inescapable conclusion that Congress, in the process of appropriating money from the Treasury to support the functioning of the government, "defines the contours of the federal government."¹⁸

C. Congressional Authority

The Constitution empowers Congress "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."¹⁹ Congress has used this authority well to enact statutes which ensure that it will be able to carry out its duties to control the expenditure and accounting of public funds. Before examining those statutes, a brief discussion of several elements of the budget process and Congress' use of powers is necessary to assure a full understanding of the issues.

1. The Budgeting Process²⁰

Budgeting is a complex and time consuming process which requires two steps to give a governmental agency or program money and authority to spend it. In an appropriation bill, Congress designates a certain amount of money which can be taken from the Treasury and used for a specific purpose. However, before appropriated money can be used, Congress must also pass an authorization bill allowing money to be appropriated.²¹ Sometimes the authorization and the appropriation are contained in the same legislation but often are in separate bills.

The funding process begins with the formulation of proposed budgets by each governmental agency. These budgets are consolidated and submitted by the President to Congress.²² Separate authorization committees in each house of Congress then hold hearings and, working within the cost ceilings provided by their respective budget committees, draft legislation to authorize appropriation of funds for agencies and programs in the consolidated budget. When it completes the draft

legislation, the committee provides it to the full house, which votes on it. If the House and Senate versions of the legislation are different, a conference committee meets to work out a version acceptable to both houses. Both houses then vote on this compromise version. Once it is approved, Congress sends it to the President for signature or veto, as outlined above. The same procedures are followed by the appropriations committees of both houses to produce legislation appropriating the desired level of funds from the Treasury. It is only when Congress and the President complete both procedures that governmental agencies and programs have funds with which they can function.

2. Congress' Power of the Purse

An authorization act authorizes the expenditure of a specified amount for certain purposes. An appropriation act establishes the specific amount of money which can be used, not necessarily the full amount authorized, and contains any additional restrictions Congress wishes to impose on the use of

restrictions Congress wishes to impose on the use of the money. To determine the extent to which Congress controls the functioning of the government, one need only take as an example the annual national defense authorization and appropriation acts which run hundreds of pages.

The Constitution provides one very powerful monetary restriction by limiting the availability of appropriations for the "Armies" to two years.²³ Additional monetary limitations by Congress can take two forms. Congress can appropriate less than the authorized amount or it can set aside amounts of money within the appropriation for specific purposes. The enactment of these limitations by Congress is itself virtually without restriction beyond the power of the President to veto the bill. The Supreme Court recently reiterated this point by stating that "when the government appropriates public funds to establish a program it is entitled to define the limits of that program."²⁴

D. Statutory Authority

Congress has devised a statutory scheme to control the expenditure of public monies. The statutes cover every conceivable loophole which would allow a government agency to spend public funds without the authorization of Congress. The most important of those statutes are described briefly below.

1. The Purpose Statute

How does Congress come by its power to control the functioning of the government? Probably the most effective means Congress has is a statute commonly referred to as the Purpose Statute.²⁵ The key provision of the statute is the simple but powerful statement that "[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."²⁶ To remove all doubt about whether Congress is in fact appropriating money in a piece of legislation, the statute provides that "[a] law may be construed to make an appropriation

out of the Treasury . . . only if the law specifically states that an appropriation is made."²⁷

Congress defines the "objects" for which it makes an appropriation within the authorization or the appropriation bill. It clarifies those "objects" by attaching any limitations it wishes to impose in either bill. When the bills contain different or conflicting limitations, the more restrictive provision governs. Congress may also impose a restriction by the use of a more specific appropriation within the appropriation.

In any case, funds from a more general appropriation may not supplement a specific appropriation unless authorized by law.²⁸ The fact that the specific appropriation is contained within a general appropriation does not change the rule that expenses incidental to carrying out the purpose of the specific appropriation may not be charged to the general appropriation.²⁹ A specific appropriation cannot be used to fund the costs of other programs not named in the appropriation, even if there is an intent to "repay" the appropriation at a later time.³⁰ If,

however, Congress appropriates a lump sum for a program or agency and does not specify any restrictions, the funds may be used as the agency determines within the parameters of the general purpose of the program.³¹

As alluded to above, augmentation of appropriations is prohibited. Whether the augmentation is effected by spending in excess of the amount appropriated, using one appropriation to pay the costs of another, retaining funds received by the government from another source, using unreimbursed details of personnel, or otherwise, the augmentation would violate the Constitutional prohibition against drawing money from the Treasury without an appropriation³², the Miscellaneous Receipts Act,³³ the Anti-Deficiency Act,³⁴ or the Purpose Statute.

Why is any of this important to the military? Just one illustration will show how easy violations of these statutes can arise for the unwary. For example, units conducting exercises have medical personnel assigned to provide medical care for U.S. military forces during the exercise. If the unit is conducting

humanitarian and civic assistance activities in conjunction with the exercise, it would be improper for the medical personnel responsible for the care of U.S. forces to provide medical care for the local civilians.³⁵ That medical care must be provided by medical personnel engaged in a Medical Readiness Training Exercise conducted in conjunction with the main exercise. Mixing of the medical care either way would in effect be using the wrong appropriation and would be an impermissible augmentation. A second example would be using O&M funds to pay for materials to be used in humanitarian and civic assistance projects because they need to be on hand at a certain time with an intention of "repaying" the O&M account when humanitarian and civic assistance funds become available.

(a) The Comptroller General's Role

Even when Congress expresses the purpose of an appropriation in clear language, questions arise concerning what is included within that purpose. It is

in this context that the Comptroller General is important. While the opinions of the Comptroller General are subject to review by the courts and do not bind them with regard to statutory interpretation, the opinions are binding on the executive branch and on the Comptroller General.³⁶ It is for this reason that much of the authority for fiscal law is found in Comptroller General Opinions.

(b) What is the Proper Purpose?

In examining the question of what is encompassed in the purpose of an appropriation, it is recognized that "under the general rule of appropriation construction an express provision is not necessary for each and every item of expenditure."³⁷ How, then is an agency to know which expenditures fall within the Congressional purpose? Citing an unprinted decision dated August 12, 1911, the Comptroller General states:

It is a well-settled rule of statutory construction that where an appropriation is

made for a particular object, by implication it confers authority to incur expenses which are necessary or proper or incident to the proper execution of the object, unless there is another appropriation which makes more specific provision for such expenditures, or unless they are prohibited by law, or unless it is manifestly evident from various precedent appropriation acts that Congress has specifically legislated for certain expenses of the Government creating the implication that such expenditures should not be incurred except by its express authority.³⁸

The most troublesome of these is the necessary and proper requirement. The Comptroller General set out the test for "necessary expenses" by stating that "an expenditure is permissible if it is reasonably necessary in carrying out an authorized function or will contribute materially to the effective accomplishment of that function, and if it is not otherwise prohibited by law."³⁹ The expenditure does

not have to be for something that is the only or even the best way to accomplish the purpose,⁴⁰ but the expenditure should be for something more than just desirable,⁴¹ and should normally be in direct support of the agency mission.⁴² When two appropriations are reasonably available for an expenditure, the agency may choose either of the appropriations⁴³ but is then bound by the election, even after the appropriation is exhausted.⁴⁴ Thus, using humanitarian and civic assistance funds to provide books and other school supplies for a schoolhouse renovated with humanitarian and civic assistance funds would not be justified under these rules.

2. The Economy Act

A second statute commonly called the Economy Act⁴⁵ impacts on fiscal matters. This legislation allows the head of a government agency or major organizational unit within an agency to obtain goods or services on a reimbursable basis by placing an order with another agency or with another major organizational unit within

its own agency. This is the method used by the United States Agency for International Development (USAID) to obtain the services of the military in disaster relief areas, which will be covered in more depth later.

While this statute provides a limited means for agencies to obtain goods or services more conveniently or cheaply than by using a commercial entity,⁴⁶ the basic requirement that funds may only be applied to the objects for which they were appropriated still applies to these transactions. An agency may not, therefore, sidestep the requirement of the Purpose Statute by obtaining goods or services under the Economy Act.

3. The Miscellaneous Receipts Statute

This statute is another in Congress' fiscal arsenal. It requires any government official who receives money for the government from any source to deposit the money in the Treasury, unless another law provides otherwise.⁴⁷ This precludes government agencies from using money received from nongovernmental

sources to carry out purposes not approved by Congress or to augment appropriations made by Congress.

4. Limitations on Voluntary Services

This statutory provision prohibits officers or employees of the government from accepting voluntary services or employing personal services exceeding those authorized by law except for emergencies involving the safety of human life or the protection of property.⁴⁸

It is intended to ensure that the government is not open to later claims for payment for the work. It also acts as a barrier to augmentation of appropriations and to the use of voluntary services performed in the name of the government which have not been approved by Congress. For example, using U.S. citizens as volunteers in planning and carrying out humanitarian and civic assistance activities would be improper under this statute.

5. The Anti-Deficiency Act

This statute prohibits officers or employees of the government from making or authorizing an expenditure or obligation before an appropriation is made or making one that exceeds an amount available in an appropriation unless the obligation is authorized by law.⁴⁹ Violations of this statute subject the violator to administrative discipline⁵⁰ and criminal penalties.⁵¹ Additionally, violations must be reported immediately to the President and to Congress.⁵²

6. Acceptance and Use of Gifts

Congress has created two limited exceptions to the prohibition against augmenting appropriations pertinent to the issues of this paper. The Secretary of each of the Services may "accept, hold, administer, and spend any gift . . . of real or personal property, made on the condition that it be used for the benefit, or . . . the establishment, operation, or maintenance, of a

school,⁵³ hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of his department."⁵⁴ Separate "general gift" funds established for each military department hold deposits of such gifts in the Treasury.⁵⁵ However, the Secretary has full discretion to disburse the funds without Congressional control. This exception is included primarily to illustrate what appears to be a loosened Congressional purse string. In fact, however, because of the other requirements discussed in this section, the purse string is still firmly attached to the use of these gifts.

With the second statutory exception, which deals with contributions for defense programs, projects and activities, Congress did not adopt the illusory hands off policy evidenced above. The statute grants the Secretary of Defense the authority to accept from "any person, foreign government, or international organization any contribution of money or real or personal property . . . for use by the Department of Defense"⁵⁶ but requires a quarterly report to the Congress on property accepted under this authority.⁵⁷

Property received may be retained and used in the form in which it was donated or may be sold or converted into a form usable by the Department of Defense, without specific authorization.⁵⁸ However, the use of the property must conform to any limits or restrictions "otherwise applicable to such program, project, or activity."⁵⁹ In addition, the Secretary must deposit contributions of money and proceeds from the sale of property received in the Defense Cooperation Account⁶⁰ and may not obligate or expend the funds "except to the extent and in the manner provided in subsequent appropriations Acts."⁶¹ Congress thus effectively keeps control over such contributions. This statute effectively prohibits military personnel from accepting gifts for the government to use in providing disaster relief or humanitarian and civic assistance.

7. Summary

This cursory review of the most important fiscal statutes makes it clear that the area is complex and requires a certain level of expertise to maneuver

within the law. There are few if any problems with this at the highest levels of DOD; the real problem is at the action level. DOD has done little or nothing to establish a comprehensive training package to ensure that those who carry out the actions to be discussed are aware of all the ramifications of their actions. It is at these planning and execution levels that well meaning, albeit prohibited actions, are most likely to occur, particularly when conducting humanitarian and civic assistance. Regardless of where they occur, it remains DOD's responsibility to respond to Congress and the President about violations. It would not be a monumental task to prepare a comprehensive directive to cover all the legal, policy and fiscal requirements for the conduct of humanitarian and civic assistance and require that all participants of such activities receive comprehensive instruction. It is not enough to reach the finance officers, the lawyers and the commanders. The soldier on the ground who will be dealing directly with the assistance must be aware of what is and is not authorized. Otherwise, violations will continue to occur and surface at Comptroller General and Congressional levels. In examining the

conduct of disaster relief and humanitarian and civic action, the importance of this instruction will become apparent.

III. MILITARY OPERATIONS AND EXERCISES

To understand the relevance and impact of these statutory limitations on military actions overseas, it is necessary to define what types of actions are available to the military and how each might be used. An operation is "[a] military action or the carrying out of a strategic, tactical, service, training, or administrative military mission".⁶² Thus, military operations can range from combat operations to operations with the specific mission of providing disaster relief. An exercise is "[a] military maneuver or simulated wartime operation involving planning, preparation, and execution carried out for the purpose of training and evaluation."⁶³ An exercise is primarily a training tool. For example, an exercise can be used to train units in tactical and logistical missions or, admittedly less glamorous, can train

combat engineers in the wartime skills of building roads and rudimentary buildings and medical personnel in the treatment of tropical diseases. As a practical matter, many skills are trained during these exercises, including logistic, administrative, legal, public affairs, fiscal, communication, engineering, command and control, to name a few. These latter exercises, as will be seen, often provide an incidental benefit to the local population in the form of humanitarian assistance and can provide a primary means for DOD to carry out the stabilization activities advocated in this paper.

Exercises and operations may take any of several forms. Combined actions involve the forces of two or more nations. Joint actions involve the forces of more than one service of the same nation. Actions may be both joint and combined at the same time or they may be unilateral and involve the forces of only one service of one nation.⁶⁴ With these basic definitions in mind, analysis of the use of military forces in the context of disaster relief and humanitarian actions is more productive.

IV. DISASTER RELIEF

A. The Military's Unique Capability to Assist

Congress recognizes that foreign disaster relief is the responsibility of the local government but it is also aware that the scope of some disasters put needed assistance beyond the capability of those governments. It has acted to provide that needed assistance and in doing so has acknowledged the unique capability of DOD to react quickly and efficiently in such emergencies both in the United States⁶⁵ and overseas.

B. Foreign Disaster Relief Legislation

Congressional policy concerning international disaster relief is set out in the Foreign Assistance Act:⁶⁶

The Congress, recognizing that prompt United States assistance to alleviate human

suffering caused by natural and manmade disasters is an important expression of the humanitarian concern and tradition of the people of the United States, affirms the willingness of the United States to provide assistance for the relief and rehabilitation of people and countries affected by such disasters.⁶⁷

This legislation authorizes assistance for "natural and manmade disasters" which include assistance to refugees⁶⁸ and those displaced due to civil strife.⁶⁹ The President is authorized to furnish assistance "on such terms and conditions as he may determine."⁷⁰ In 1979, the President created the United States International Development Cooperation Agency (IDCA), delegated his functions under this act and allocated funds made available to carry out this portion of the act to the Director of that agency.⁷¹ At the same time, the President moved USAID from the Department of State to the International Development Cooperation Agency and designated its Administrator the Special Coordinator for International Disaster

Assistance,⁷² with authority to "call upon the resources of any agency of the U.S. Government to provide emergency relief or technical assistance in disaster preparedness."⁷³ The decision to provide assistance must be made "in consultation with the Secretary of State."⁷⁴

1. Department of Defense Involvement

DOD has no independent authority to engage in foreign disaster relief, although the DOD Directive on the subject provides an exception for a military commander "at the immediate scene of a foreign disaster" who may provide relief "when time is of the essence and when humanitarian considerations make it advisable to do so."⁷⁵ The policy also makes clear, under the authority of the Economy Act,⁷⁶ that any response is "[s]ubject to overriding military mission requirements."⁷⁷ The Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)),⁷⁸ decides what action DOD will take in response to a request for assistance in providing foreign disaster relief. If

the ASD(ISA) determines that DOD will participate in the disaster relief, the Joint Chiefs of Staff (JCS) direct the relief operation.⁷⁹

2. Types of Relief Authorized

Congress left the type of relief authorized open ended, specifying only that the President "insure [sic] that the assistance provided . . . shall, to the greatest extent possible, reach those most in need of relief and rehabilitation as a result of natural and manmade disasters."⁸⁰ Only infrequently in specific authorizations does Congress detail what should be provided.⁸¹ DOD offers some guidance on the types of relief to allow DOD components to plan for relief contingencies, stating that "[n]ormally it includes humanitarian services and transportation; the provision of food, clothing, medicines, beds and bedding, temporary shelter and housing; the furnishing of medical materiel, medical and technical personnel; and making repairs to essential services."⁸² The DOD directive gives detailed pricing guidance for

reimbursement under the Economy Act⁸³ and the military departments are required to prepare and forward bills.⁸⁴

It is clear that the type of assistance provided to disaster victims is uniquely within the capability of the military and its wartime mission. No other government agency is as well equipped, trained, supplied, and staffed. The training benefit which accrues to the military from acting to provide such assistance, with full reimbursement for the cost of goods and services provided, more than makes up for the disruption of normal activities.

As stated above, one problem associated with foreign disaster relief activities is the fact that those who carry out the assistance are generally unaware of the fiscal rules. At intermediate levels there is a tendency in these situations to forget that the normal rules are still in effect despite the emergency. As difficult as it may be to accept, especially when dealing with human tragedies, Congress does not fund the Department of Defense for the purpose

of providing international disaster relief. Unless the agencies which are funded for that purpose properly request and pay for materials and services, DOD personnel may not be able to legally provide everything the victims of disasters need. Transportation, medical care at military facilities, acceptance of voluntary services and donations to be passed on to victims are areas vulnerable to violations of statutory prohibitions during these situations. DOD must reemphasize the need for commanders to ensure that all those connected with providing foreign disaster relief are aware of and stay within the fiscal constraints under which DOD must operate.

While DOD can capitalize on the positive effects of its involvement in providing foreign disaster relief, there is no good reason to press for any extension of authority to conduct these types of activities. Assuming any direct responsibility for the planning, coordination, and other responsibilities associated the disaster relief would overtax the military in these days of decreased budgets and personnel and would require the development of

expertise not currently in the DOD inventory. DOD can and should, however, press its participation in these actions to its advantage when arguing against budget cuts.

V. HUMANITARIAN AND CIVIC ASSISTANCE

A. DOD Violations Lead to Change

Prior to 1985, DOD had no independent authority to provide humanitarian or civic action assistance. It could conduct these activities only at the request of another government agency under the authority of the Economy Act or as incidental to participation in security assistance programs.⁸⁵ Following a 1984 Comptroller General opinion that DOD violated the Purpose Statute and may have committed Anti-Deficiency Act violations during combined exercises in Honduras in which DOD personnel conducted humanitarian and civic assistance type activities,⁸⁶ a section of the 1985 DOD Appropriations Act gave DOD limited authority to conduct activities of this kind which were "incidental

to authorized operations."⁸⁷ In 1986, Congress gave DOD permanent authority to conduct a broader scope of humanitarian and civic assistance in conjunction with military operations.⁸⁸

B. Background and Development

The actions of U.S. forces during a six month joint combined military exercise in Honduras which began in August, 1983, became the focus of intense scrutiny by Congress and the Comptroller General because of DOD's use of operation and maintenance (O&M) appropriations for construction activities, training of Honduran military forces and humanitarian and civic assistance to Honduran civilians. The Comptroller General concluded that DOD improperly used O&M appropriations to fund security assistance and foreign aid, activities specifically provided for in other appropriations, and exceeded the statutory \$200,000 limit on construction projects.⁸⁹

The actions the Comptroller General called

humanitarian and civic assistance took place "on an almost daily basis" during the exercise. Medical personnel treated "over 46,000 Honduran civilian medical patients [and] 7,000 dental patients,"⁹⁰ and gave "approximately 200,000 immunizations."⁹¹ Veterinary personnel treated "more than 37,000 animals."⁹² In addition, "U.S. forces transported U.S.-donated medical supplies, clothing, and food" throughout Honduras and "[i]n one case, a team of 15-20 Navy Seabees constructed a 20 foot-by-80 foot schoolhouse at the Village of Punta Piedra, using AID-supplied materials."⁹³

In response to a Comptroller General request for an opinion, the DOD General Counsel acknowledged that DOD had no authority to conduct humanitarian and civic assistance other than under the Economy Act. At the same time, perhaps unaware of the General Counsel's letter, the Deputy Secretary of Defense replied to the Comptroller General opinion by stating that DOD took the position that these activities were "permissible under current law when they are incidental to legitimate exercise activities and are conducted at no

incremental cost" and "solely to accomplish an exercise mission."⁹⁴ The Government Accounting Office reply to that assertion pointed out that the actions "went beyond a level of assistance that could be described as incidental, but were instead designed as major exercise activities in their own right."⁹⁵

The two houses of Congress had quite different reactions to the Comptroller General opinion. The House Committee on Appropriations stated that "such diversion of funding from properly appropriated purposes is unwarranted and directs that the Department of Defense take such steps as necessary to prevent recurrence of such improprieties in the future."⁹⁶

The Senate took those steps for the Department of Defense and provided an unusual twist to the issue. The full Congress responded to the Comptroller General decision by enacting what is commonly referred to as the Stevens Amendment to the 1985 Defense Appropriations Act.⁹⁷ The legislation authorized DOD to use Operation and Maintenance (O&M) funds for "humanitarian and civic assistance costs incidental to

authorized operations." Although not binding, the Conference Report on the bill limited the authority to activities incidental to JCS-directed or JCS-coordinated exercises.⁹⁸ DOD accepted and implemented that limitation.⁹⁹

This Congressional response was the beginning of an expansion of authority for DOD to engage in humanitarian and civic assistance that continues today. The Senate Report on the Stevens Amendment noted the Comptroller General finding that DOD had violated the Purpose Statute but, taking quite a different approach than the house, went on to say:

The Committee agrees that such activities should be carried out primarily by agencies of the Federal Government assigned responsibility. However, the Committee does not believe that Congress intended completely to foreclose Defense Department activities which yield social, humanitarian, or civic benefits. To the extent that such benefits are incidental to authorized operations,

reasonable expenditures of this kind should be allowable.¹⁰⁰

The Comptroller General interpreted the Stevens Amendment in an unusual way. Rather than an acknowledgement that DOD already had authority to conduct humanitarian and civic assistance, it saw the legislation as intending "to ensure that [the Comptroller General 1984 decision] did not prevent DOD from carrying out otherwise authorized O&M-funded activities merely because they yield social, humanitarian, or civic benefits."¹⁰¹ This places the amendment in a favorable light and avoids the issue of what the committee was really saying. Since the Comptroller General opinion which prompted the legislation focused on DOD's lack of authority to conduct the activities except under the Economy Act, it found that by using O&M funds to conduct these activities, DOD violated the Purpose Statute. When the committee says that it did not believe "Congress intended completely to foreclose Defense Department activities which yield social, humanitarian, or civic benefits," it had to mean that Congress did not intend

to foreclose these actions when it enacted the Purpose Statute. When combined with the earlier statement that the committee "agrees that such activities should be carried out primarily by the agencies . . . assigned responsibility," (emphasis added) the committee creates its own exception to the Purpose Statute and associated fiscal laws. This "exception," of course, is not law but it might as well be, given the subsequent legislation which develops in this area. Without openly recognizing that providing humanitarian and civic assistance is within the purview of USAID, which receives specific appropriated funds to carry out that work, the committee's indirect approach to the problem creates an atmosphere which brings about subsequent legislation giving DOD much broader authority. These actions are only part of a course of action by Congress which eventually leads to severe criticism of U.S. foreign assistance programs; these issues will be addressed later.

1. DOD Authority

During the course of the Comptroller General investigation of the Honduran exercise, DOD pressed for and obtained permanent statutory authority to provide humanitarian and civic assistance "in conjunction with authorized military operations" in foreign countries.¹⁰² This authority is available only if the Secretary of the military department concerned "determines that the activities will promote--(A) the security interests of both the United States and the country in which the activities are to be carried out; and (B) the specific operational readiness skills of the members of the armed forces who participate in the activities."¹⁰³ The key provision is the second one, which mandates that the primary purpose of the exercise must be to train U.S. personnel. The Secretary of State must specifically approve and give Congress a full report on the conduct of these activities in any foreign country¹⁰⁴ and activities carried out under this authority "shall complement, and may not duplicate, any other form of social or economic assistance which may be provided to the country concerned by any other

department or agency of the United States."¹⁰⁵

The emphasis on training and the lack of an emphasis on long term development programs provide what distinguishing elements exist between these humanitarian and civic assistance activities and those provided by USAID and other governmental agencies. Congress' insertion of this requirement, when it already exists in other fiscal laws, would be puzzling were it not for the legislative history of the Stevens Amendment discussed above. In effect, the requirement is creative legislation which signals Congressional understanding and acceptance of the similarities and possible duplications in authority between these actions authorized for DOD to carry out and those already in place for USAID to carry out. Whatever the reason, the requirement is easily met by emphasizing the training focus of military actions: O&M appropriations are authorized to conduct humanitarian and civic assistance in conjunction with exercises which are conducted primarily to train U.S. forces; since such activities are not covered by a more

specific appropriation and are not otherwise prohibited by law, there is no violation of the Purpose Statute.

2. Types of Activities Authorized

The legislation defines humanitarian and civic assistance as "(1) medical, dental, and veterinary care provided in rural areas of a country; (2) construction of rudimentary surface transportation systems; (3) well drilling and construction of basic sanitation facilities; and (4) rudimentary construction and repair of public facilities."¹⁰⁶ Coincidentally, each of these actions are direct mission requirements of U.S. forces which cannot be realistically trained for within the United States, often because of statutory restrictions.

It is easy to see the benefits which accrue to the developing country aside from the improvements left behind. In working with U.S. forces to plan and carry out the project, the foreign participants from civil engineers to medical personnel to foreign military gain valuable experience in planning, logistics, accounting

and other areas which can be used in building the infrastructure of the country.

3. Funding Issues

Congress created a morass by providing three distinct authorities for spending under this statute. The first provides that expenses which are "a direct result of providing humanitarian and civic assistance" must be paid from "funds specifically appropriated for such purposes."¹⁰⁷ The next sentence provides the second authority by stating that "[n]othing in this section may be interpreted to preclude the incurring of minimal expenditures by the Department of Defense for purposes of humanitarian and civic assistance out of funds other than funds appropriated pursuant to paragraph (1)."¹⁰⁸ The Conference Report provided some guidance on the meaning of this provision, although it did not put a dollar figure on what the report terms "deminimus expenditures." The conferees "make clear they had in mind activities that have been commonplace on foreign exercises for decades" and give two specific

examples.¹⁰⁹ The third authority is the Stevens Amendment discussed above which authorizes costs "incidental to authorized operations."¹¹⁰ No definition or guidance on what "incidental" means has been provided by Congress, the Comptroller General or DOD. Because appropriations for humanitarian and civic assistance are relatively small, exercise participants are always looking for additional money for projects. Providing cogent advice on what is authorized under each of these three authorities is a challenge. DOD should officially adopt the Conference Report language to clarify minimal expenditures or press Congress to codify a definition. In addition, it should request that Congress either clarify or eliminate the incidental expenditure authority. As a practical matter, both authorities provide more confusion and take more time to try to interpret than they are worth.

As with DOD actions in disaster relief actions, there is a general lack of knowledge of applicable fiscal constraints by those who participate in exercises involving humanitarian and civic action projects. There is a complex procedure for cost

allocation complicated by statutory funding constraints dealing with construction costs, expenses of the foreign country the United States may and may not fund, restrictions when dealing with nonmilitary personnel concerning the provision of subsistence and medical care and DOD regulations dealing with transportation costs and authorizations. Each of these areas provides the potential for violations of the fiscal laws discussed above. DOD has not yet published a directive on humanitarian and civic assistance and has not done an adequate job of providing comprehensive guidance on these complex and confusing issues. This results in a less efficient exercise program and leaves DOD open to inadvertant and even deliberate violations of fiscal laws.

4. Continuing Expansion of DOD Authority

Congress has obviously become convinced of DOD's ability to successfully manage this humanitarian and civic assistance exercise program because it has given DOD more control with fewer monetary constraints. The

first appropriation under the humanitarian and civic action authority was for \$3,000,000 for one fiscal year.¹¹¹ The second appropriation was for \$16,400,000 over a 5 year period.¹¹² The most recent appropriation carries no limit but is merely a part of the the CINC contingency fund appropriation.¹¹³ While still required to report assistance given in great detail to the Congress, this merging of the appropriation into the CINC contingency fund gives DOD greater flexibility to manage the program. In addition, Congress has provided authority to assist in funding the expenses of foreign participants in combined exercises¹¹⁴ which DOD can use to increase the exercise program.

C. Interaction with Security Assistance¹¹⁵

Security assistance serves a number of purposes: it helps allies and friendly countries to defend themselves and to deter threats of outside interference; it gives us influence to help mediate conflicts; it helps sustain our access to valuable bases in

strategic areas; and it gives us the opportunity to promote the importance of respecting civilian government and human rights. Security assistance also enables allies and friends to accept defense responsibilities that we might otherwise have to assume ourselves--at much greater cost in funds and manpower. Dollar for dollar, it's the most cost-effective security money can buy.¹¹⁶

Using this statement of the purposes of security assistance, it is easy to see how the conduct of humanitarian and civic assistance exercises dovetails with those national security objectives. The security assistance program falls under the Foreign Assistance Act¹¹⁷ and the Arms Export Control Act¹¹⁸ and has programs covering grants and loans to foreign nations, foreign military sales of defense materials and services, international education and training for foreign military personnel, peacekeeping operations, and economic support. Security assistance is a highly

regulated and complex area covered by statutory prohibitions, such as the general prohibition against providing training for police.¹¹⁹ Suffice it to say for purposes of this paper that security assistance initiatives generally require that the foreign nation pay for the materials and services it receives. Very often the participants of exercises conducting humanitarian and civic assistance cross the line to security assistance simply because they are unaware of the prohibitions. Nonetheless, security assistance programs can be used in conjunction with combined training exercises to enhance the effect of both programs.¹²⁰

VI. MILITARY CIVIC ACTION

The purpose of military civic action is closely tied to the purposes of security assistance and

humanitarian and civic assistance. Military civic action is defined as:

The use of preponderantly indigenous military forces on projects useful to the local population at all levels in such fields as education, training, public works, agriculture, transportation, communications, health, sanitation, and others contributing to economic and social development, which would also serve to improve the standing of the military forces with the population. (U.S. forces may at times advise or engage in military civic actions in overseas areas.)¹²¹

Because the focus of military civic action is on helping the military forces of a foreign nation gain the support of the civilian population to combat "subversion, lawlessness, and insurgency,"¹²² the role of U.S. Civil Affairs personnel in peacetime is primarily one of advising.¹²³ As such, military civic action forms a part of the security assistance program and is done on a reimbursable basis. The importance of

military civic action to the issues of this paper is the use that can be made of Civil Affairs personnel in the context of combined exercises in which humanitarian and civic action projects are conducted.

One of the issues discussed in the 1984 Comptroller General opinion concerned the training that was provided to Honduran forces during the exercise. While DOD argued that the training was merely for interoperability and safety reasons, the Comptroller General decision found that the training was comparable to that normally and properly provided under security assistance and should have been funded from security assistance appropriations.¹²⁴ With this restriction on training outside the ambit of security assistance in mind, Civil Affairs personnel can provide valuable support to exercises in which humanitarian and civic assistance projects are carried out. They can use these exercises to train for the varied tasks they would be called on to perform in wartime or in acting as advisors in connection with security assistance programs.

VII. STABILITY: HOW DO WE GET THERE FROM HERE?

A. A Need to Rethink Our Approach

For the American foreign policy establishment, as it has expressed itself in decades of working with Latin militaries, it is a matter of principle that American values will, with enough exposure, rub off on the Latins, who will gradually come to embrace the American way of life.¹²⁵

It is clear from the state of South and Central America today that this ethnocentric way of viewing the world is not the solution. Other countries coming into their own through the fight for democracy need not become little Americas. What they need to become are countries that are developing towards a stability and humanity that fits within their own cultural and social history. The chaotic conditions which exist in so much of the world are a continuing reminder that democracy does not necessarily equate to stability and

prosperity. With all the evidence before us, we have yet to devise a workable solution to these problems. We have ample evidence of solutions that have no long lasting effect yet seem unwilling to try approaches that deviate from a mind set that says ours is not only the best but is the only way--because we hold the purse strings.

It is imperative that the United States take the lead in working towards a global stability. Despite those who argue isolationist views, the United States cannot turn its back on the world and its needs by arguing that the Communist threat no longer exists. We must face the reality of a much more powerful global threat which, left unchecked, will be more destructive than Communism could ever have been. The chaos in virtually every part of the world that confronts us daily in the media may seem far removed from our relatively stable little part of the world, but these conditions can quickly escalate into events that involve us in profound ways: terrorist bombings, the taking of hostages, the Haitian refugee situation, Grenada, Panama, the Gulf War. Our failure to confront

these issues and use all the resources we have at hand will be costly. It will cost us more money and it will cost us more lives.

B. The Causes of Instability

What are the causes of this instability and chaos? A good summary of the problem is found in A Time to Build:¹²⁶

It is true that poverty and lack of opportunity have been the lot of the masses in most of the underdeveloped states for centuries past. The present difference lies in the fact that this poverty--flouted as a battle symbol in struggles for independence, used as political propaganda by domestic office seekers . . . and brought more sharply into relief by the ever widening gap between the haves and the have-nots--has become a nagging source of popular discontent.

Dissatisfaction, in turn gives rise to varied symptoms of instability and disorder. Governments topple with alarming frequency and without recourse to the medium of franchise. Strikes, riots, and clamorous protest movements flare up in cities and at institutions of learning. Violent revolutions explode and, in some instances, drag on for years of internecine blood-letting.¹²⁷

The author goes on to note that the "governments are inclined to be unstable and not infrequently corrupt," that "[n]ational leaders camouflage their own incompetence" and that those "who led the struggles for political independence often have not been as well qualified for leadership in the less glamorous business of nation building."¹²⁸ These conditions, described in this manner nearly thirty years ago, are with us today. Often the seeds of discontent develop into varying degrees of what we have come to call Low Intensity Conflict (LIC),¹²⁹ characterized at the lower level by disruptive actions against the government and at the

highest level by belligerency. While there are never easy answers to complex problems, we can do better than we have to alleviate these core problems.

C. The Current System

Is the system really broken or are we simply confronting problems that can't be solved? Essentially, it is a recognized fact that the system is broken and we have no way of knowing whether the problems can be solved if we have to work with broken tools.

1. The Security Assistance Program

A Commission on Integrated Long-Term Strategy, established by the Secretary of Defense presented its findings on the current security assistance program in May of 1988. A perhaps innocuous statement in the Commission's paper is as damning an indictment of the effectiveness of the system as can be found. In

discussing the changing views of the United States over the past forty years, the Commission states that "[t]he needs of the recipients of our aid have changed less over time than we who have given it."¹³⁰ The Commission determined that the present security assistance program is "seriously underfunded for pursuing an integrated, long-term strategy . . . too micromanaged by Congress to enable any Administration to deal with crises" and "so encumbered with legal and administrative tendrils as to deprive it of credibility either here or abroad."¹³¹ The Commission recommended 12 basic legislative reforms, including a revised pricing system to allow DOD to absorb more of the costs as the "cost of doing business," more capable security assistance personnel at the Unified Command and Embassy level, more involvement by the Unified Commanders in the program, and more use of DOD training exercises.¹³² Needless to say, these recommendations have not been implemented to any great degree.

2. United States Agency For International Development

What of the other agency responsible for assistance missions, USAID? A preliminary report from the presidential study group assigned the task of examining "U.S. foreign aid programs"¹³³ finds that USAID is "isolated from the rapidly flowing political events of the 1990's" and is hampered by "too many objectives--39 at last count--imposed by the executive branch and Congress."¹³⁴ The study group is likely to recommend that USAID be integrated into the State Department, a reversal of the 1979 reorganization plan discussed above, to give it more political clout.

3. DOD Humanitarian and Civic Assistance Exercises

It would appear that the only form of foreign assistance, although we dare not call it that, that is gradually freeing itself of Congressional micromanagement is the DOD humanitarian and civic assistance exercise program. Although Congress attaches specific appropriations to the humanitarian

and civic action appropriations requiring the use of "Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia" and allowing limited medical care for certain Pacific island civilians in Army medical facilities to benefit medical educational programs, the requirements are not burdensome. The legislation is clearly focused on limited, defined activities and although it infringes on USAID and its specific appropriations for assistance, Congress has approved the apparent overlaps.

D. The Need for An Interim Strategy

Reform of the security and foreign assistance programs will take a massive effort and a great deal of time. DOD must continue to press for those needed changes but must act now within the authority it possesses to work towards stability where it can. It must avoid the all too typical shotgun approach but must formulate a comprehensive strategy, press Congress for reforms based on that strategy and begin working in

whatever ways it can right now on the implementation of that strategy.

VIII. Conclusion

The world today is in chaos but at the same time has never been closer to the stability that is the goal of the world community. There are, of course, areas of the world where nothing less than military force will ever be effective in producing anything near stability. The vast majority of developing countries, however, are capable of attaining that peace and stability if they can find means to lessen the underlying causes of discontent. The United States must provide the guidance and the funding to achieve those goals. There simply is no other country willing or able to do so. Other countries can be convinced to assist but the United States must take the lead.

The United States has in place foreign and security assistance programs intended to provide the support needed by developing countries. The rhetoric

is in place but the capability of the programs in their present state is too unfocused to provide any real help. The programs are in dire need of rethinking and overhaul. The United States must develop a comprehensive, workable, integrated program aimed at the causes of instability in the context of a changing world.

DOD has the means to begin providing some of the long overdue basic assistance aimed at the root causes of instability. It can use these programs to counter the budget and personnel cuts that will hamper its ability to perform its wartime mission if alternate means of training the remaining forces is not found. With several simple changes to the system DOD can have the basis of a strategy that will serve it well as it moves into its place in the new world order.

At the same time, DOD has an obligation to press for a national strategy aimed at undercutting the forces which lead to instability in so many of the developing countries. It must persuade Congress that national pride will cause most countries to have

military forces and that those forces can be used to build the nation. DOD must persuade Congress to reexamine its policy against encouraging extensive civic action by military forces in foreign countries.¹³⁵ It is only by using these forces for building the nation that most countries can hope to reach stability. These and other approaches based on an integrated, intelligent assessment of what our global needs are is the only hope of achieving the peace and stability that is within our grasp. The military must play a vital role in achieving that peace.

ENDNOTES

1. Barton Gellman, Keeping the U.S. First, Wash. Post, Mar. 11, 1992, at A1; David Hackworth, A Pentagon in Dreamland, Wash. Post, Feb. 23, 1992, at C3; John Lancaster, Top General Supports 150,000 U.S. Troops in Europe as Hedge, Wash. Post, Mar. 4, 1992, at A20; John Lancaster, In Today's Army, Being All You Can Be May Require Bailing Out, Wash. Post, Mar. 10, 1992, at A15; Plan Aims to Block New Superpower, Richmond Times-Dispatch, Mar. 8, 1992, at A5; Gordon R. Sullivan, How the Army Sees A New World, Wash. Post, Feb. 23, 1992, at C3.
2. David Hoffman, Foreign Aid's Eroding Consensus, Wash. Post, Nov. 24, 1991, at A4; David Hoffman, Americans' Mood Limits Foreign Aid, Wash. Post, Mar. 10, 1992, at A1; Pentagon Spurns Aspin's Budget Cuts as 'Political', Wash. Post, Feb. 28, 1992, at A14.
3. Michael Isikoff, Bush, Latin Leaders Agree to Stepped-Up Drug Fight, Wash. Post, Feb. 28, 1992, at A2; Michael Isikoff, International Opium Production Up 8% Last Year, Wash. Post, Mar. 1, 1992, at A4; Eugene Robinson, Peru's Summit Stance Raises Questions for U.S. Anti-Drug Effort, Wash. Post, Mar. 3, 1992, at A13.
4. Gadhafi Says 2 Men Can't Be Extradited, Wash. Post, Mar. 3, 1992, at A14; Kurds Flee Area Outside Safety Zone, Wash. Post, Jan. 19, 1992, at A21; Members Urging Possible Use of Force Against Iraq, Wash. Post, Mar. 8, 1992, at A8; Caryle Murphy, Report on Bombing Suspects Disputed by Libyans, Briton, Wash. Post, Feb. 12, 1992, at A26; Trevor Rowe, Iraqi Official Warns That U.N. Personnel May Become Targets, Wash. Post, Mar. 3, 1992, at A12; Trevor Rowe, U.N. Finds 'Evolution' in Libyan Stance, Wash. Post, Mar. 5, 1992, at A34; Trevor Rowe, U.N. Set to Warn Iraq Anew, Wash. Post, Mar 10, 1992, at A13; Strobe Talbott, High Noon Minus the Shoot-Out, Time, Feb. 10, 1992, at 39.
5. James Carney, Yeltsin's Enemies, Time, Mar. 9, 1992, at 32; Rowland Evans and Robert Novak, Time of Troubles for Yeltsin, Wash. Post, Feb. 12, 1992, at A23; Blaine Harden, Croatia Accused of Rights Violations, Wash. Post, Feb 15, 1992, at A29; Fred

Hiatt, Killings Rife in Nagorno-Karabakh, Moldova, Wash. Post, Mar 3, 1992, at A12; Laura Silber, Serbs Place Bosnian City Under Siege, Wash. Post, Mar. 3, 1992, at A13.

6. Jill Smolowe, Vengeance is Mine, Time, Mar. 2, 1992, at 32.

7. Lee Hockstader, As Conflicts Wane, Central America Strives for Long-Term Stability, Wash. Post, Jan. 19, 1992, at A20; Bruce W. Nelan, No Time for Colonels, Time, Feb. 17, 1992, at 41; 3 Policemen Slain in Peruvian Strike, Richmond Times-Dispatch, Feb. 15, 1992, at A5.

8. Bruce W. Nelan, A Land of Stones, Time, Mar. 2, 1992, at 29; Eleanor Randolph, Ex-Soviet Aid: How, What and to Whom?, Wash. Post, Jan. 19, 1992, at A20; Carol Reed, Albania Hit by Food Riots; Thousands Flee to Port, Wash. Post, Mar. 1, 1992, at A24; Margaret Shapiro, GI Rations Lift Moscow Pensioners, Wash. Post, Feb. 12, 1992, at A1; Margaret Shapiro, Moscow's Hard-Luck Flea Markets, Wash. Post, Feb. 15, 1992, at A1; Jill Smolowe, Bad to Worse, Time, Feb. 10, 1992 at 32.

9. Richard Lacayo, Boldness Without Vision, Time, Mar. 9, 1992, at 25. See also Zbigniew Brzezinski, The West Adrift; Vision in Search of A Strategy, Wash. Post, Mar. 1, 1992, at C1.

10. U.S. Const. art. I, § 1.

11. U.S. Const. art. I, § 8, cl. 1.

12. U.S. Const. art. I, § 2, cl. 1.

13. U.S. Const. art. I, § 8, cl. 12-14.

14. U.S. Const. art. I, § 8, cl. 18.

15. U.S. Const. art. I, § 7, cl. 2.

16. Id.

17. U.S. Const. art. I, § 9, cl. 7.

18. Kate Stith, Congress' Power of the Purse, 97 Yale L.J. 1343, 1345 (1988).

19. U.S. Const. art. I, § 8, cl. 18.

20. Contract Law Division, The Judge Advocate General's School, U.S. Army, Fiscal Law Deskbook at 1-16 (Aug. 1991).

21. 10 U.S.C.S. § 114a (Law. Co-op. 1991).

22. 31 U.S.C.S. § 1104 (Law. Co-op. 1991) contains the requirement to prepare the budget and 31 U.S.C.S. § 1105 (Law. Co-op. 1991) sets out the required contents of the budget.

23. U.S. Const. art. I, § 8, cl. 12.

24. Rust v. Sullivan, 111 S. Ct. 1759, 1796 (1991).

25. 31 U.S.C.S. § 1301 (Law. Co-op. 1991).

26. 31 U.S.C.S. § 1301a (Law. Co-op. 1991).

27. 31 U.S.C.S. § 1301(d) (Law. Co-op. 1991).

28. 20 Comp. Gen. 272 (1940).

29. 20 Comp. Gen. 739 (1941).

30. 36 Comp. Gen. 386 (1956).

31. 55 Comp. Gen. 307 (1975).

32. U.S. Const. art. I, § 9, cl. 7.

33. 31 U.S.C.S. § 3302(b) (Law. Co-op. 1991).

34. 31 U.S.C.S. § 1341 (Law. Co-op. 1991).

35. There is an "exception" to this contained in the legislative history of the humanitarian and civic action statute. It uses as an example of permissible de minimus action "a unit doctor's examination of villagers for a few hours with the administration of several shots and the issuance of some medicines--but would not include the dispatch of a medical team for mass inoculations." H.R. Conf. Rep., 100th Cong., 2nd Sess. 333 (1987) [hereinafter Report].

36. Greene County Planning Board v. Federal Power Authority, 559 F.2d 1227, 1233-34, (2nd Cir. 1977).

37. 34 Comp. Gen. 195 (1954).

38. 6 Comp. Gen. 619 (1927).
39. 66 Comp. Gen. 356 (1987).
40. 34 Comp. Gen. 599 (1955).
41. 34 Comp. Gen. 599 (1955).
42. 68 Comp. Gen. 505 (1989).
43. 68 Comp. Gen. 337 (1989).
44. Ms. Comp. Gen. B-139510, (13 May 1959).
45. 31 U.S.C.S. § 1535 (Law. Co-op. 1991).
46. 31 U.S.C.S. § 1535(a)(4) (Law. Co-op. 1991).
47. 31 U.S.C.S. § 3302 (Law. Co-op. 1991).
48. 31 U.S.C.S. § 1342 (Law. Co-op. 1991).
49. 31 U.S.C.S. § 1341 (Law. Co-op. 1991).
50. 31 U.S.C.S. § 1349 (Law. Co-op. 1991).
51. 31 U.S.C.S. § 1350 (Law. Co-op. 1991).
52. 31 U.S.C.S. § 1351 (Law Co-op. 1991).
53. 10 U.S.C.S. § 2605 (Law. Co-op. 1991) sets out authority for the Secretary to accept and administer gifts for defense dependents' education system. The provisions are nearly identical to those in 10 U.S.C.S. § 2601 (Law. Co-op. 1991).
54. 10 U.S.C.S. § 2601 (Law. Co-op. 1991).
55. 31 U.S.C.S. § 2601(b) (Law. Co-op. 1991).
56. 10 U.S.C.S. § 2608(a) (Law. Co-op. 1991).
57. 10 U.S.C.S. § 2608(e) (Law. Co-op. 1991).
58. 10 U.S.C.S. §§ 2608(d) and (f) (Law. Co-op. 1991).
59. 10 U.S.C.S. § 2608(f) (Law. Co-op. 1991).

- 60. 10 U.S.C.S. § 2608(2) (Law. Co-op. 1991).
- 61. 10 U.S.C.S. § 2608(2) (Law. Co-op. 1991).
- 62. Department of Defense, Dictionary of Military and Associated Terms (June 1, 1987) [hereinafter Dictionary].
- 63. Id.
- 64. Id.
- 65. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C.S. §§ 5121-5201 (Law. Co-op. 1991).
- 66. Foreign Assistance Act of 1961 §§ 501-577, 75 Stat. 424, 424-42 (codified as amended 22 U.S.C.S. §§ 2151 to 2349aa-9 (Law. Co-op. 1991)).
- 67. 22 U.S.C.S. § 2292(a) (Law. Co-op. 1991).
- 68. 22 U.S.C.S. § 2292f (Law. Co-op. 1991).
- 69. 22 U.S.C.S. §§ 2292i, 2292l, 2292o (Law. Co-op. 1991).
- 70. 22 U.S.C.S. § 2292(b) (Law. Co-op. 1991).
- 71. Executive Order No. 12163, 44 Fed. Reg. 56678 (1979), reprinted as 22 U.S.C.S. § 2381 note (Law. Co-op. 1991) [hereinafter Executive Order].
- 72. 22 U.S.C.S. § 2292b (Law. Co-op. 1991).
- 73. Id.
- 74. Executive Order, supra note 71, at §1-102b.
- 75. Dep't of Defense Directive 5100.46, Foreign Disaster Relief, para. IV.C. (Dec. 4, 1975) [hereinafter DOD Directive].
- 76. 31 U.S.C.S. § 1535(a)(3) (Law. Co-op. 1991).
- 77. DOD Directive, supra note 75, at para. IV. B.
- 78. Id. at para. IV. A.
- 79. Id. at para. V. C.

80. 22 U.S.C.S. § 2292(c) (Law. Co-op. 1991).

81. For example, in dealing with "the longer term rehabilitation and resettlement needs of displaced persons and other innocent victims of civil strife" in Africa, Congress specifies that "[f]unds for this purpose should be used to assist African governments in providing semipermanent housing, potable water supply systems, and sanitary facilities which are generally not provided by existing refugee relief agencies." 22 U.S.C.S. 22921(a) (Law. Co-op. 1991).

82. DOD Directive, supra note 75, at para. III. C.

83. Id. at para. VII.

84. Id. at para. VII. B.

85. 63 Comp. Gen. 422 (1984).

86. Id.

87. Dep't. of Defense Appropriations Act of 1985, Pub. L. No. 98-473, 98 Stat. 1837, 1942 (1984) [hereinafter Stevens Amendment].

88. 10 U.S.C.S. § 401 (Law. Co-op. 1991).

89. 63 Comp. Gen. 422, 422-429 (1984).

90. 63 Comp. Gen. 422, 472 (1984).

91. Letter from Comptroller General to Honorable Bill Alexander at para. III B. n.17 (Jan. 30, 1986) [hereinafter Comp. Gen. Letter] (updating 63 Comp. Gen. 422 (1984)).

92. 63 Comp. Gen. 422, 472 (1984).

93. 63 Comp. Gen. 422, 472 (1984).

94. Comp. Gen. Letter, supra note 91, at para. III. B.

95. Id.

96. Comp. Gen. Letter, supra at note 91.

97. Stevens Ammendment, supra note 87.

98. H.R. Rep. No. 1159, 98th Cong., 2nd Sess. at 386 (1984).

99. Comp. Gen. Letter, supra note 91, at para. III. B.

100. S. Rep. No. 636, 98th Cong., 2nd Sess., 37 (1984).

101. Comp. Gen. Letter, supra note 91, at para. III. C.

102. 10 U.S.C.S. § 401 (Law. Co-op. 1991). Because of the complexity of this statute, it is set out in full.

§ 401. Humanitarian and civic assistance provided in conjunction with military operations

(a)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may carry out humanitarian and civic assistance activities in conjunction with authorized military operations of the armed forces in a country if the Secretary concerned determines that the activities will promote-

(A) the security interests of both the United States and the country in which the activities are to be carried out; and

(B) the specific operational readiness skills of the members of the armed forces who participate in the activities.

(2) Humanitarian and civic assistance activities carried out under this section shall complement, and may not duplicate, any other form of social or economic assistance which may be provided to the country concerned by any other department or agency of the United States. Such activities shall serve the basic economic and social needs of the people of the country concerned.

(3) Humanitarian and civic assistance may not be provided under this section (directly or indirectly) to any individual, group, or organization engaged in military or paramilitary activity.

(b) Humanitarian and civic assistance may not be provided under this section to any foreign country unless the Secretary of State specifically approves the provision of such assistance.

(c)(1) Expenses incurred as a direct result of providing humanitarian and civic assistance under this section to a foreign country shall be paid for out of funds specifically appropriated for such purpose.

(2) Nothing in this section may be interpreted to preclude the incurring of minimal expenditures by the Department of Defense for purposes of humanitarian and civic assistance out of funds other than funds appropriated pursuant to paragraph (1).

(d) The Secretary of Defense shall submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs of the House of

Representatives a report, not later than March 1 of each year, on activities carried out under this section during the preceding fiscal year. The Secretary shall include in each such report--

(1) a list of the countries in which humanitarian and civic assistance activities were carried out during the preceding fiscal year;

(2) the type and description of such activities carried out in each country during the preceding fiscal year; and

(3) the amount expended in carrying out each such activity in each such activity in each such country during the preceding fiscal year.

(e) In this section, the term "humanitarian and civic assistance" means--

(1) medical, dental, and veterinary care provided in rural areas of a country;

(2) construction of rudimentary surface transportation systems;

(3) well drilling and construction of basic sanitation facilities; and

(4) rudimentary construction and repair of public facilities.
(f) Not more than \$16,400,000 may be obligated or expended for the purposes of this section during fiscal years 1987 through 1991.

103. 10 U.S.C.S. § 401(a)(1) (Law. Co-op. 1991).

104. 10 U.S.C.S. §§ 401(b) and (d) (Law. Co-op. 1991).

105. 10 U.S.C.S. § 401a(2) (Law. Co-op. 1991).

106. 10 U.S.C.S. § 401(e) (Law. Co-op. 1991).

107. 10 U.S.C.S. § 401(c)(1) (Law. Co-op. 1991).

108. 10 U.S.C.S. § 401(c)(2) (Law. Co-op. 1991).

109. Report, Supra note 35.

110. Stevens Amendment, supra note 87.

111. Id.

112. 10 U.S.C.S. § 401f (Law. Co-op. 1991).

113. National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, 105 Stat. 1290, Sec. 902 (1991).

activities carried out under this section during the preceding fiscal year. The Secretary shall include in each such report--

(1) a list of the countries in which humanitarian and civic assistance activities were carried out during the preceding fiscal year;

(2) the type and description of such activities carried out in each country during the preceding fiscal year; and

(3) the amount expended in carrying out each such activity in each such activity in each such country during the preceding fiscal year.

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103. 10 U.S.C.S. § 401(a)(1) (Law. Co-op. 1991).

104. 10 U.S.C.S. §§ 401(b) and (d) (Law. Co-op 1991).

105. 10 U.S.C.S. § 401a(2) (Law. Co-op. 1991).

106. 10 U.S.C.S. § 401(e) (Law. Co-op. 1991).

107. 10 U.S.C.S. § 401(c)(1) (Law. Co-op. 1991).

108. 10 U.S.C.S. § 401(c)(2) (Law. Co-op. 1991).

109. Report, Supra note 35.

110. Stevens Amendment, supra note 87.

111. Id.

112. 10 U.S.C.S. § 401f (Law. Co-op. 1991).

113. National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, 105 Stat. 1290, Sec. 902 (1991).

129. Low intensity conflict is defined as:

A political-military confrontation between contending states or groups below conventional war and above the routine, peaceful competition among states. It frequently involves protracted struggles of competing principles and ideologies. Low intensity conflict ranges from subversion to the use of armed force. It is waged by a combination of means, employing political, economic, informational, and military instruments. Low intensity conflicts are often localized, generally in the Third World, but contain certain regional and global security implications.

Dep't of Army & Dep't of Air Force, Field Manual 100-20, Military Operations in Low Intensity Conflict, at 1-1 (Dec. 5, 1990).

130. Commission on Integrated Long-Term Strategy, Working Group on Regional Conflict, Commitment to Freedom: Security Assistance as a U.S. Policy Instrument in the Third World, extract of paper presented to the Commission on May 25, 1988. (Extract obtained as handout during Operation Law Course at the Judge Advocate General's School, Army, in April, 1990. Copy on file with the author.)

131. Id.

132. Id.

133. Don Oberdorfer, 'Isolated' AID Should Be Merged with State Dept., Study Panel Says, Wash. Post, Mar. 3, 1992, at A15.

134. Id.

135. 22 U.S.C.S. § 2754 (Law. Co-op. 1991).